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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,071	03/16/2001	Andreas Schieder	2789-36	5530
23117	7590	08/05/2005	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			WILSON, ROBERT W	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/809,071	Applicant(s) SCHIEDER ET AL.	
	Examiner Robert W. Wilson	Art Unit 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 32-63 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The claims do not define how that the invention determines that it is in an “active period” nor do the claims define what happens if the inter-arrival period is not within the predetermined range thus limitations that determined critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976)

Referring to claims 32, 41-42, & 51-53, the claims do not define how that the invention determines that it is in an “active period” nor do the claims define what happens if the inter-arrival period is not within the predetermined range thus limitations that determined critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the Disclosure. How does the invention determine “silence”? Is silence determined when the inter-arrival time is greater than the predetermined range?

3. Claims 32-63 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Referring to claims 32, 41-42, & 51-53, monitoring or detecting inter-arrival time is described in the claim limitations as the inter-arrival time for packets between the network side and the subscriber terminal side. The specification on Pg 23 defines the inter-arrival time as the arrival rate of packets into the transmitter queue and not the arrival of packets at the receiving end. Which is the correct definition of inter-arrival time?

Claim Objections

5. Claims 41, 51, & 52 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

4. Claims 32-52 are objected to because of the following informalities:

Referring to claim 32 & 42, the limitation of “means adapted to” appears in steps a1, a2, a3,

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& b1 respectively. "Adapted" is interpreted as an optional limitation and therefore these limitations are interpreted as intended use and not given any weight. The examiner recommends that "adapted" be deleted from the claim language. Appropriate correction is required.

Referring to claims 33 & 43, the limitation of "further adapted" appears "Adapted" is interpreted as an optional limitation and therefore these limitations are interpreted as intended use and not given any weight. The examiner recommends that "adapted" be deleted from the claim language. Appropriate correction is required.

Referring to claims 32 & 42, step b1, the limitation "for a user data packet transfer" is objected to because "a user packet data transfer" has been previously defined in the preamble and it is not clear whether this is referring to a new user packet or the previous user packet. The examiner recommends that the applicant add "said" to the second reference to the "user data packet". Appropriate correction is required.

Referring to claim 54, in the preamble the applicant refers to the "user data packets between said network" which make the limitation unclear or confusing. The examiner suggests "for performing a transfer of user data packet between said network said and a subscriber terminal side". Appropriate correction is required.

Referring to claim 32, the claim defines a limitation for the link direction of the link as being from the base station to the subscriber terminal while the packets are transferred from the subscriber terminal to the base station which are inconsistent limitations. The examiner suggest that the applicant modify the claim to make these limitations consistent. Appropriate correction is required

Response to Arguments

5. Applicant's arguments with respect to claims 32-63 have been considered but are moot in view of the new ground(s) of rejection. Refer to the above rejection for details.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Wilson whose telephone number is 571/272-3075. The examiner can normally be reached on M-F (8:00-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571/272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert W Wilson
Examiner
Art Unit 2661

RWW
8/3/05



BOB PHUNKULH
PRIMARY EXAMINER